

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MARTEZ KIMBROUGH,)	
)	
Plaintiff,)	
)	
v.)	Case No. 4:10CV438 SNLJ
)	(FRB)
MICHAEL J. ASTRUE, Commissioner)	
of Social Security,)	
)	
Defendant.)	

REPORT AND RECOMMENDATION

This cause is on appeal from an adverse ruling of the Social Security Administration. Presently pending before the Court is Defendant's Motion To Reverse And Remand With Suggestions In Support (Docket No. 19/filed November 1, 2010). All pretrial matters were referred to the undersigned United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b), for appropriate disposition.

Defendant answered plaintiff's Complaint in this cause on June 1, 2010. In the instant Motion, defendant requests that the matter be remanded for further consideration of plaintiff's claims. Specifically, defendant avers that, upon remand, the Appeals Council will direct the administrative law judge to update plaintiff's medical records, obtaining new psychological testing and medical expert testimony regarding plaintiff's level of intellectual functioning. Defendant further avers that the Appeals Council will instruct the ALJ to further consider whether plaintiff's impairments meet or medically equal one of the listed

impairments at step three of the sequential evaluation process. Defendant further avers that, should the case proceed to step five of the sequential evaluation process, the ALJ will be directed to pose a hypothetical question to a vocational expert based upon all of the limitations outlined in plaintiff's residual functional capacity assessment. (Id.). The defendant requests that this Court enter a final judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure, reversing the decision of the ALJ and remanding this case to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g).¹ (Id.)

On November 2, 2010, plaintiff filed a response, stating that he had no objection to defendant's motion.

A review of the defendant's motion shows it to be well-taken. See, e.g., Buckner v. Apfel, 213 F.3d 1006, 1009-11 (8th Cir. 2000).

Accordingly,

IT IS HEREBY RECOMMENDED that Defendant's Motion To Reverse And Remand With Suggestions In Support (Docket No. 19) be granted.

IT IS FURTHER RECOMMENDED that the Commissioner's decision be reversed and remanded to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g), for further consideration of plaintiff's claims.

The parties are advised that they have until November 18,

¹Defendant requests that this Court's order specifically include a statement that it is "reversing and remanding" the case.

2010 to file written objections to this Report and Recommendation. Failure to file objections may result in waiver of the right to appeal questions of fact. Thompson v. Nix, 897 F.2d 356, 357 (8th Cir. 1990) (per curiam).

A handwritten signature in cursive script, reading "Frederick R. Buckles".

Frederick R. Buckles
UNITED STATES MAGISTRATE JUDGE

Dated this 4th day of November, 2010.